

SUBJECT: Continuing the Board of Law Examiners

COMMITTEE: Government Organization: favorable, with committee substitute

VOTE: 7 ayes — Gibson, Black, Finnell, Hartnett, A. Hill, Naishtat, Robnett
0 nays
2 absent — Smithee, Stiles

SENATE VOTE: On final passage, May 10 — voice vote

WITNESSES: (On companion bill, HB 854)

For — John Cornyn, Texas Supreme Court; Beverly Tarpley and Wayne Denton, Board of Law Examiners

Against — None

On — Joey Longley, Sunset Commission

BACKGROUND: The Board of Law Examiners is responsible for investigating and determining the eligibility of applicants for licensing as lawyers and for administering the bar exam. It investigates character and fitness of each applicant and verifies that the applicant has met the educational requirements. Last year the board considered 3,319 candidates and approved 70 to 75 percent. The board comes under provisions of the Texas Sunset Act and will be abolished September 1, 1991 unless continued by the Legislature.

DIGEST: CSSB 359 would continue the Board of Law Examiners until September 1, 2003, and amend the board's authorizing statute to make the following changes:

- require the board to provide facilities for the disabled to take the bar exam in each city in which the exam is given;

- prohibit denial of admission to the bar examination because of lack of U.S. citizenship or permanent residency;
- require the board to file financial reports annually.
- eliminate statutory provisions regarding admission of attorneys from outside this state and allow the Supreme Court to set rules;
- make various standard Sunset Commission revisions, such as setting out grounds and procedures for removal of board members, requiring a career ladder and equal employment opportunity policies and policies for public information.

**SUPPORTERS
SAY:**

CSSB 359 would continue the current regulatory structure of the Board of Law Examiners, which has worked well in screening applicants for the legal profession. Although the Supreme Court has ultimate authority over the admission of lawyers to the bar, the Legislature should retain most of the current statutory provisions that provide for additional oversight.

The compensation of the board members should not be changed. The members are paid \$20,000 per year for 400 to 600 hours work. If the compensation were reduced to the standard per diem rate, as some have suggested, qualified members would be reluctant to serve. Services that are now performed by board members, such as creating and supervising exams, would be contracted out, and the staff rather than the board would become the real controlling body.

The district committees provide a cost-effective method for local investigations. The whole district committee system only costs about \$1,500 per year and offers some public and local input.

There is no reason to place the board's funds in the Treasury, since there are requirements for audit by the state auditor and oversight by the Supreme Court, and this bill would add a requirement for an annual financial report.

The existing provisions on admission of out-of-state attorneys are based on an outmoded emphasis on whether the other state has "equivalent"

requirements for admission, regardless of the qualifications of the individual applicant. The Supreme Court has issued new rules that are similar to those of a majority of other states, and these should prevail. The new rules allow waiver of the bar exam if the applicant has practiced for at least five of the previous seven years.

The Senate floor amendments, removed by the committee substitute, concerning chemical dependency of applicants would require the board to grant a provisional license to a person who is still suffering from problems with drugs or alcohol. The State Bar already must deal with members impaired by drugs or alcohol; it should not invite more problems. The board already has authority to grant a provisional license to a person who has achieved some degree of rehabilitation.

OPPONENTS
SAY:

The Board of Law Examiners should be abolished, as the Sunset Advisory Commission staff recommended, since the Texas Supreme Court has inherent authority to regulate the admission of lawyers.

The compensation of board members should be reduced to the standard state per diem rate. Other state licensing boards require similar amounts of work from members and pay the standard rate.

The board should eliminate the use of district committees in the review of candidates' character and fitness. The committees are only used in about 12 percent of cases and are unnecessary. Other licensing boards do not use such local committees.

The statutory provisions exempting certain former legislators from the licensing requirement of having attended law school should be repealed. No other state has a similar law. In the last 10 years, only six people have taken the bar exam under this exception and only two passed.

The board's funds should be placed in the state Treasury and subject to appropriation, just as those of other agencies are. Funds outside the treasury and not subject to the comptroller's oversight.

**OTHER
OPPONENTS
SAY:**

The Senate floor amendments concerning chemical dependency would require the board to allow a person who has suffered from chemical dependency to take the exam and receive a provisional license. They would have allowed the board to require the person to be supervised by a licensed attorney, required the person to be referred to the same programs for chemical dependency that already licensed attorneys are referred to and would have required that the person have completed treatment and have been free of chemical dependency for at least two years before regular licensing. It would be a positive way of dealing with the problem rather than a punitive one.

NOTES:

The committee substitute differs from the bill as it passed the Senate mainly in that the committee substitute deletes four Senate floor amendments related to admission of people who have had chemical dependency problems. The committee substitute also includes a section requested by the Supreme Court authorizing changes in the rules regarding admission of lawyers from outside of the state.